

**Before the  
Federal Communication Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
<b>Federal-State Joint Board</b>	)	
<b>On Universal Service</b>	)	<b>CC Docket No. 96-45</b>
	)	
<b>RCC Holdings, Inc.</b>	)	
<b>Petition for Designation as an</b>	)	
<b>Eligible Telecommunications Carrier</b>	)	<b>DA 02-746/DA 02-3181</b>
<b>Throughout its Licensed Service Area</b>	)	
<b>In the State of Alabama</b>	)	

**Comments In Support Of The Application Filed By The Alabama  
Rural LECs By:  
Fred Williamson and Associates, Inc. ("FW&A")  
On behalf of:**

**Chouteau Telephone Company, an Oklahoma ILEC  
H&B Telephone Communications, Inc., a Kansas ILEC  
Moundridge Telephone Company, Inc., a Kansas ILEC  
Pine Telephone Company, Inc., an Oklahoma ILEC  
Pioneer Telephone Association, Inc., a Kansas ILEC  
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC  
Twin Valley Telephone, Inc., a Kansas ILEC**

### **Background and Summary**

FW&A is a consulting firm located in Tulsa, Oklahoma that represents small rural Incumbent Local Exchange Carriers (ILECs) that operate in Kansas and Oklahoma. The ILECs represented by FW&A are similar in size and the rural nature of their service areas to most of the Alabama Rural LECs that filed the Application for Review with the Commission on December 23, 2002. The ILECs represented by FW&A also face competition from a number of wireless carriers, as do the Alabama Rural LECs. FW&A and the ILECs have a direct interest in this proceeding because, at odds with the public interest, Western Wireless has been granted Eligible Telecommunications Carrier (ETC) status in a number of their service areas based on flawed rationale similar to that used by the Wireline Competition Bureau (WCB) when it granted ETC status to RCC Holdings, Inc. (RCC) in Alabama.

The Alabama Rural LECs filed an Application for Review on December 23, 2002 of the WCB decision that RCC, a wireless carrier, would be an ETC in the Alabama Rural LECs' service areas. The Alabama Rural LECs request that the Commission review and set aside the WCB's decision because:

- Issues involving the basis for designating ETCs have been referred to the Universal Service Joint Board and recommendations have yet to be made by the Joint Board. The Alabama Rural LECs offer evidence and correctly observe that the Joint Board resolution of these issues will have a significant public interest impact on designation of competitive ETCs. However, the WCB indicated

erroneously that these issues (concerns about high cost support to competitive ETCs) were beyond the scope of its RCC order.<sup>1</sup>

- Public interest concerns about the growth of universal service funding and the sufficiency of funding were ignored by the WCB. The WCB found that the amount of support available to rural ILECs would be unaffected, because wireless carriers like RCC will serve currently unserved customers and second lines. The Alabama Rural LECs correctly argue and provide evidence that this WCB finding is erroneous.<sup>2</sup>
- The CMRS market is already competitive with multiple carriers serving all markets, including rural markets. The Alabama Rural LECs provide evidence and correctly observe that providing increasing levels of universal service support to CMRS providers in this competitive market is at odds with the public interest and may have dire consequences by affecting the ability of rural ILECs to continue providing quality universally available service with just, reasonable and affordable rates. However, the WCB indicated erroneously that these issues were beyond the scope of its RCC order.<sup>3</sup>
- The public interest is not served because costs (including the increase in the size of the universal service fund due to supporting multiple carriers and the loss of network efficiency due to multiple competing carriers) exceed the benefits of designating multiple ETCs. Again, the WCB found, erroneously, that these issues are beyond the scope of its RCC order.<sup>4</sup>

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<sup>1</sup> Alabama Rural LEC Application, pages 2; 8 to 13.

<sup>2</sup> Id., pages 2 to 3; 13 to 14.

<sup>3</sup> Id., pages 3 to 4; 14 to 16.

<sup>4</sup> Id., pages 4; 16 to 21.

- The WCB order erroneously relied on the Pine Ridge decision. The facts in that case were different than in the instant case and the order ignored the multistate operations of the Interstate Telephone Company.<sup>5</sup>

FW&A and the ILECs it represents support approval of the Alabama Rural LECs' application because (a) A fair and balanced public interest analysis was apparently not made by the WCB and (b) The WCB was wrong in its finding that the public interest issues raised by the Alabama Rural LECs are beyond the scope of its order and its findings are erroneous.

***The Communications Act Requires a Fair and Balanced Review of Public Interest Considerations Before Additional ETCs are Designated in Rural ILEC Service Areas***

The Communications Act was passed with twin objectives – support for competitive entry into telecommunications markets and support for universal service. The Act did not intend for the Commission or State Commissions to focus on competitive objectives to the exclusion or detriment of universal service. If it had, Congress would have made it clear that the competitive objectives were paramount. What is clear is that the Communications Act was intended to serve and promote the public interest in the pursuit of these twin objectives. At its basics, the public interest means seeking to insure that in the short and long term, the public as a whole is better off, and certainly not worse off, as a result of the Federal and State Commission actions to implement the Act's provisions. Because of Congressional concern for the universal availability of service in high-cost, sparsely populated rural areas served by ILECs, the Act was quite specific with regard to Congress' intent regarding the public interest:

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<sup>5</sup> Id., pages 5, 21 to 23.  
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1. Competition – “Exemption -Subsection (c) of this section shall not apply to a rural telephone company until (i) Such company has received a bona fide request for interconnection, services, or network elements, and (ii) The State Commission determines...that such request is not unduly economically burdensome, is technically feasible and is consistent with section 254....”<sup>6</sup>

For larger and non-rural ILECs, Congress and the Act provided no exemption from the competitive provisions of the Act. However, it is clear from the exemption that has been provided to only rural ILECs that Congress’ public interest concerns regarding rural ILEC service areas centered on (a) Whether competitive entry is economically feasible in rural ILEC areas and (b) The effect that competitive entry in rural ILEC areas would have on universal service. Congress did not intend that universal service public interest issues be subservient to, or ignored by the Commissions (Federal or State) in an effort by those Commissions to artificially introduce competition into rural areas.

2. Universal Service – “DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS -...Upon request and consistent with the public interest, convenience and necessity, the state commission may, in the case of a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.”<sup>7</sup>

The intent of Congress here is crystal clear – an additional ETC is not required in rural ILEC areas as a matter of law, but may be allowed, but only if adding an additional ETC

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<sup>6</sup> Communications Act of 1934 as Amended by the Telecommunications Act of 1996 (Act), Section 251 (f)(1)(A).

is in the public interest. Again, Congress did not intend that universal service public interest issues be subservient to, or ignored by the Commissions in an effort by those Commissions to artificially introduce competition into rural areas.

As a result of these provisions of the Act, Commissions, when evaluating potential additional ETCs in rural ILEC service areas, have an obligation and statutorily imposed duty to perform, not just a cursory analysis to determine if the potential ETC meets the Section 214 (e)(1) requirements, but an in depth public interest analysis to determine:

- What specific and factually supported consumer benefits will an ETC competitor bring to the rural market? For instance, there should be concrete evidence that  
(a) There will be lower prices than those offered by the existing ILECs and Cellular Mobile Radio Service (CMRS) competitors in the market and (b) New services will be provided that are not already offered in that market.<sup>8</sup>
- Will new technologies actually be introduced to the rural market and do they require universal service support? Will the supported CMRS ETC provide technologies not already offered by existing CMRS competitors in the market?

Why should the technology of the new CMRS ETC be supported when the same

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<sup>7</sup> Act, Section 214 (e)(2).

<sup>8</sup> The preconceived bias in favor of ETC supported competitive entry is that a ETC CMRS competitor when introduced to a rural market will cause prices to be lowered and new services to be offered to consumers in the rural market. There is simply no evidence to support this bias. First, existing CMRS competitors in these markets do not currently offer lower rates than do existing ILECs and generally compete with each other based on service options, not price reductions. Second, the existence of CMRS competitors has resulted in the loss of both local and access revenues for rural ILECs. This loss will convert into a requirement to increase universal service funding for rural ILECs or to raise, not lower, customer rates in order to maintain a quality network that is universally available. Artificially inserting a supported ETC CMRS competitor into an already competitive rural market will simply and uneconomically accelerate the loss of ILEC revenues requiring further universal service funding increases or local rate increases by the rural ILEC. Finally, the evidence of Commission actions to date does not demonstrate that competitive entry will lower rates for the average consumer. Local rates for the average consumer are now much higher and toll rates, which had declined, are beginning to rise.

or similar technologies of existing CMRS competitors in the area are not supported?<sup>9</sup>

- Will the additional ETCs provide (a) Quality services at just, reasonable and affordable rate levels as required by the Act<sup>10</sup> and (b) Access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas?<sup>11</sup>
- Will the rural market support more than one ETC on an economically viable basis without harming the ability of the rural ILEC or competitor to provide universally available service? Is it likely that the loss of lines to an ETC competitor combined with the possible loss of support to the competitor will result in

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<sup>9</sup> The Alabama Rural LECs have presented evidence that there are CMRS competitors currently operating in the rural markets they serve. The existence of unsupported CMRS competitors in rural ILEC markets is not an isolated occurrence as demonstrated by the Commissions findings and comments filed in WT Docket Nos 02-379 and 02-381. The WCB has presented no evidence as to why it is appropriate and in the public interest to support RCC's technological entry when the wireless technology RCC uses is already provided in the rural market it seeks to enter on an unsupported basis by other CMRS competitors.

<sup>10</sup> Act, Section 254 (b)(1). In fact, RCC, even though it would be an ETC and provide "universal services," will not be required by the WCB to provide quality services at just, reasonable and affordable rates. At odds with the public interest criteria and principles that Congress placed in the Act for the provision of universal service, RCC will have no rate level or quality of service objectives or oversight. A fair and balanced public interest analysis would have found that, as compared with the service provided by the ILECs, RCC's service is inferior, not in compliance with Section 254 of the Act and therefore, not in the public interest.

<sup>11</sup> Act, Section 254 (b)(3). In fact, RCC, like other CMRS providers, will not provide access to presubscribed interexchange services. Because RCC will not provide equal access to the customers' choice of a presubscribed interexchange carrier, a fair and balanced public interest analysis would have found that, as compared with the service provided by the ILECs, RCC's service is inferior, not in compliance with Section 254 of the Act and therefore, not in the public interest. Additionally, there appears to be no concrete evidence that RCC will provide access to advanced telecommunications and information services, as do the rural ILECs. If this is the case, RCC is again providing inferior service, is not in compliance with the public interest criteria for universal service in Section 254 of the Act and should not be designated as an ETC.

increases in ILEC consumer rates and/or increases in the requirements for universal service funding by the ILEC?<sup>12</sup>

- What are the costs of adding an ETC competitor to a rural market?
- Will universal service funding be predictable and sufficient as required by the Act<sup>13</sup> if additional ETCs are introduced into the rural market?
- Is the potential ETC financially viable and likely to remain in the market?
- Are there currently CMRS providers in the market that are not receiving universal service support? If more than one wireless provider is providing service in a rural universal service area, these wireless providers apparently can compete effectively among themselves and with the rural wireline provider without receiving universal service funding. Is this because their rates and prices are not constrained to a just and reasonable rate for residential and business service as compared to the wireline carrier whose rates are constrained? Is this because

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<sup>12</sup> The WCB rejects the proposition that designating an additional ETC into a rural sparsely populated market will cause reductions in investment or service quality or consumer rate increases. In the alternative, the WCB asserts that issues involving increases in universal service funding by the ILEC to avoid rate increases and deterioration in service quality are beyond the scope of its RCC order. A thorough public interest analysis by the WCB would have shown that these are valid public interest concerns that should not have been dismissed by asserting, without evidence, that the ILECs could implement operating efficiencies. There is no evidence that the small rural ILECs are inefficient. Because of scale economics, it is unlikely that the rural ILECs will be able to replace, through efficiencies, revenues (local, access and universal service) lost to RCC. These lost revenues are essential to a small ILEC's ability to provide quality universally available service at affordable rate levels and to its ability to continue investing in existing and advanced services and technologies. Evidence demonstrating the Alabama Rural ILECs will experience actual and factual harm, exists in an examination of the market failure and bankruptcies of Global Crossing and WorldCom. These backrushes resulted in the loss of access revenues that the ILECs rely on (as they rely on local and universal service funding revenues) to provide universal service, meet their Carrier of Last Resort (COLR) responsibilities and invest in new facilities and technologies. Because of the loss of revenues, ILECs delayed or cancelled network upgrades and investments in advanced services. Additionally, because the rural ILECs are rate of return regulated, in the longer term, this loss of essential revenues may result in increases in access rate levels. The WCB should, in a public interest analysis, evaluate existing competitive failures and their effects on ILECs and the public in order to insure that the same mistakes are not repeated by blindly promoting artificially-induced and supported competition into a rural market that will likely not support, economically and with sufficient universal service funding, the rural ILEC and additional competitive ETCs.



wireless carriers are not required to incur the costs incurred by the wireline carrier to insure Carrier of Last Resort (COLR) service, meet quality of service (QoS) objectives, etc?

- Is it in the public interest to provide funding to these wireless providers when the fund size is growing and multiple CMRS providers already serve an area? Does that funding contribute to the public interest and consumer welfare?
- Is it likely that the other CMRS providers that are providing service in the rural ILEC area but not receiving universal service support, will seek support if ETC status is granted to one CMRS provider? What effect will that have on the predictability and sustainability of universal service support?

The Act requires at least this level of analysis to determine if designation of an additional ETC is appropriate in rural ILEC service areas. A public interest analysis must in the end analyze these questions (and possibly other relevant information) to determine if the benefits of designating an additional ETC such as RCC outweigh the costs that will be thrust upon the public and the ILEC.

***The WCB Did Not Perform the Statutorily Required Public Interest Analysis and Its Decision Must Be Set Aside By the Commission Until That Analysis Is Performed***

As RCC pointed out in its opposition to the application...”In several prior decisions, the WCB has conducted the statutory public interest analysis by focusing on competitive benefits, specifically considering (1) Whether consumers will benefit from competition

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<sup>13</sup> Act, Section 254 (b)(5).  
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and (2) Whether consumers would be harmed by the designation of an additional ETC.”<sup>14</sup>

Further, RCC quotes from WCB findings, both in this case and in others:

- “...We find no merit in the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates or reduce service quality...”<sup>15</sup>
- “...Competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to customers.”<sup>16</sup>
- “...Competition will allow customers in rural Alabama to choose service based on pricing, service quality, customer service, and service availability....the provision of competitive service will facilitate universal service....by creating incentives to insure that quality services are available at ‘just, reasonable and affordable rates.’”<sup>17</sup>
- The Alabama Rural LECs: “...have not presented persuasive evidence to support their contention that designation of an additional ETC in the rural areas at issue will reduce investment in infrastructure, raise rates, reduce service quality...or result in loss of network efficiency.”<sup>18</sup>

It is clear from these quotes in RCC’s opposition that the predominate, if not sole focus of the WCB in its public interest analysis in the instant case was a bias toward the introduction of supported competition,<sup>19</sup> without a proper analysis of the effects of the supported competitive entry, nor a proper analysis as to whether that supported entry is warranted or necessary. These statements make it clear that the WCB accepts the rhetoric about the benefits of competition while rejecting any claims or arguments regarding the harmful effects of supported competitive entry in rural ILEC areas. This is

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<sup>14</sup> RCC Opposition, page 4.

<sup>15</sup> Id., page 5.

<sup>16</sup> Id.

<sup>17</sup> Id., page 6.

<sup>18</sup> Id., page 7.

<sup>19</sup> Utilization of universal service funding to provide incentives for a competitor to enter a rural market.

a bias in favor of competition that is not lawfully allowed and precludes a fair and balanced public interest analysis. For instance:

1. Competition is not the issue. CMRS competitors exist in all of the areas served by the Alabama Rural LECs.<sup>20</sup> The competitive benefits that the WCB touts are presumably already available without the need to support one of these competitors. Therefore, the issue is really that the WCB has decided to support with universal service funding one of those CMRS competitors. The WCB has not indicated why it is in the public interest to provide support to the latest CMRS competitor (RCC) when support is clearly not required by the current CMRS competitors. In other words, why does RCC need the support and why is it in the public interest to provide that support when vibrant CMRS competition already exists? This public interest analysis was never made by the WCB.

2. The WCB could have validated its claims about the benefits of competition. It could have determined if existing CMRS competition in the areas served by the Alabama Rural LECs has improved service quality, lowered prices or resulted in better service availability to consumers. In fact, if the WCB had performed this analysis, it would have likely found that quality services at just, reasonable, and affordable rates are now provided only by the Alabama Rural LECs. It is doubtful that anyone would make these claims for the CMRS providers. Further it could have explained how providing universal service support to just the latest CMRS entrant (RCC) would have caused these hoped for beneficial results, when the CMRS providers designated as ETCs, as a result of a faulty interpretation of Section 331(c), have no quality or rate oversight to

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<sup>20</sup> Alabama Rural LECs Application, pages 3 to 4.

insure that they provide quality service at just, reasonable or affordable rates.<sup>21</sup> It appears that the purported benefits of designating RCC as an ETC are based on pure speculation, and not an in depth public interest analysis.

3. The WCB has apparently relied on unsubstantiated assumptions (authorizing an additional ETC may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to customers) and ignored pertinent information (per the WCB, the rural LECs have not presented persuasive evidence to support their contention that investment in infrastructure will be reduced, rates raised, service quality reduced and a loss of network efficiency) in order to dismiss the fact that there will be costs to the rural LECs and rural telecommunications consumers.

A modest amount of public interest fact finding would demonstrate that the rural ILECs as a whole are efficient with little overhead, provide the lowest prices now for telecommunications services to their consumers and offer the best highest quality service in the industry. As discussed previously in these comments:

- There is no evidence that the ILECs are inefficient and can, through efficiencies, replace essential revenues lost to a supported competitive ETC.
- There is evidence to support the contention of the Alabama Rural LECs, as a result of the Global Crossing and WorldCom bankruptcies, that the loss of essential revenues will cause rural ILECs to delay or cancel network upgrades and investments in infrastructure to provide advanced services and technologies. This loss of revenues will also likely result in higher access rates.

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<sup>21</sup> The CMRS providers argue that the Commissions may not regulate the basic universal service entry or rates of wireless carriers, even though those wireless carriers may receive Federal Universal Service Funding for their basic universal services. The Commission has erroneously agreed with this misreading of the Act in WT Docket No. 00-239, Memorandum Opinion and Order, Released August 2, 2002. This interpretation would allow a wireless carrier to receive publicly provided support with essentially no regulatory oversight. This is not what the Communications Act envisioned. The Act in Section 332(c), does not allow Commissions to regulate the rates and entry of cellular carriers. However, if these carriers seek to be eligible for universal service support, cellular carriers, like all local exchange carriers, are subject to the Act's universal service provisions in Section 214(e) and Section 254, that require all carriers, on a competitively neutral basis, to meet requirements established by Federal and State Commissions in order to receive universal service funding. Cellular carriers seeking universal service funding must not be allowed to avoid their universal service responsibilities by claiming that Section 332(c) of the Act prohibits rate and entry regulations and thus Commissions, both Federal and State, may not regulate their universal service offerings. This is a misreading of the Act's provisions.

In addition to these factual effects on the rural ILECs and their customers resulting from the loss of critical revenues in a sparsely populated, low density market, loss of local revenues and possibly universal service revenues to an additional ETC such as RCC, will not cause the ILEC COLR costs (that are necessary to provide a universally available network and thus universal service) supported by these revenues to disappear. The WCB, in its analysis, apparently has ignored the rules of both the Federal and State Commissions that allow rate-of-return ILECs to recover their costs. This means that lost revenues will result in higher consumer rates or increases in universal service funding. This result, stemming squarely from designating an additional ETC (RCC) in the Alabama Rural LECs service areas, clearly harms consumers by rate increases or universal service surcharge increases. These public interest concerns are not beyond the scope of this docket but are squarely part of the public interest analysis that should have been performed by the WCB.

### **Conclusion**

RCC is correct in its observation that the Commission should administer: "...a competitively neutral universal service program that provides rural consumers with comparable choices in telecommunications service to those available in urban areas and places competitors on a level playing field with incumbents."<sup>22</sup> However, what the WCB will actually grant RCC is an anti-competitive advantage vis-à-vis the rural ILECs and other non-supported CMRS providers already operating in the rural market. RCC will not provide universal service as envisioned by Congress in Section 254 of the Act because:

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<sup>22</sup> RCC Opposition, page 12.

- It will not be required to provide just, reasonable and affordable universal service rate levels comparable to those charged by the rural ILECs or those charged in urban areas. It may charge any rate it wishes and still qualify for support.
- It will not be required to provide quality services.
- It will not be required to provide access to advanced and information services.
- It will not be required to provide presubscribed access to long distance carriers.
- It will not be required to justify its need for support.
- It will not be required to assume COLR responsibilities.

ILECs are required to meet these obligations and consequently, they meet the public interest and universal service requirements of Sections 214 and 254 of the Act. RCC does not meet these public interest and universal service requirements and thus if RCC is designated as an ETC, universal service funding would not be competitively neutral, would not provide comparable choices to consumers and would not provide a level playing field. Instead, RCC would be provided with an artificially contrived and anti-competitive advantage by the WCB. This situation is not in the public interest and should be rejected by the Commission. As Commissioner Adelstein has recently observed:

“...states [and the Commission] must make sure that the new market entrants receiving universal service meet all the obligations required by the Act. These include providing service throughout the service area and advertising its availability. They also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service.

Another consideration is the effect it will have on the cost of providing service. As the fund grows, so does the level of contribution. We must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for customers. The public interest also demands that regulators seriously consider whether a market can support more than one carrier with universal service. If not, then new designations shouldn't be given as a matter of course just because it appears they meet other qualifications....we shouldn't use

universal service to support artificial competition from providers [CMRS] that don't provide the same or better service than what customers already receive."<sup>23</sup>

As demonstrated in these comments in support of the Alabama Rural LECs' Petition and in the Application and Reply of the Alabama Rural LECs, the WCB did not perform a balanced and unbiased public interest analysis. Instead, the WCB simply assumed that the addition of an additional ETC CMRS competitor would be in the public interest. This is a clear example of artificially and regulatory contrived competition that is at odds with and not in the public interest. Until the public interest considerations discussed herein are fairly analyzed by the WCB, the Commission should set aside the WCB's RCC ETC designation.

Respectfully submitted on behalf of the ILECs by,

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<sup>23</sup> Remarks of Commissioner Jonathan S. Adelstein to the NTCA Annual Meeting and Expo in Phoenix,

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Arizona on February 3, 2003, pages 3 and 4. Information in brackets added for clarity.

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